Supreme Court, U.S.
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No. 92-100

In The

Supreme Court of the United States

October Term, 1992

JERRY D. WOODS,

Petitioner,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Eighth Circuit correctly affirmed the District Court's *sua sponte* dismissal of Petitioner's case with prejudice.

LIST OF PARTIES

Pursuant to Supreme Court Rule 29, the following is a list of all parent companies and subsidiaries, except wholly owned subsidiaries, of Union Pacific Railroad Company:

Union Pacific Corporation
Automated Monitoring & Control International, Inc.
Camas Prairie Railroad Company
Central California Traction Company
Denver Union Terminal Railway Company, The
Kansas City Terminal Railway Company
Longview Switching Company
Oakland Terminal Railway
Ogden Union Railway & Depot Company, The
Portland Terminal Railroad Company
Portland Traction Company
St. Joseph & Grand Island Railway Company, The
St. Joseph Terminal Railroad Company
Trailer Train Company (TTX)
UP Sub., Inc.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
ARGUMENT	2
I. The Petition Satisfies None Of The Traditional Standards Governing Review On Certiorari	2
II. The Case Below Was Correctly Decided	3
CONCLUSION	4

TABLE OF AUTHORITIES

Page

CASES:

Brown v. Frey, 806 F.2d 801 (8th Cir. 1986) 4

Link v. Wabash R.R., 370 U.S. 626 (1962) 3

OTHER AUTHORITIES:

Fed. R. Civ. P. 1 4

Supreme Court Rule 10 2

Supreme Court Rule 10.1(a) 2

Supreme Court Rule 10.1(c) 2

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STATEMENT OF THE CASE

After a clear pattern of delay was demonstrated by Petitioner, the trial court dismissed his case with prejudice on its own motion. Petitioner's pattern of delay included: failure to comply with various court orders; failure to respond to questions asked at his deposition (even after being instructed to do so by the court); and not being ready to proceed at trial.

Petitioner's statement of the case fails to acknowledge both the extent of his pattern of delay and the fact that he was warned by the Court that further delay

would put him at risk of being subject to sanctions, including dismissal of his action.

ARGUMENT

I. The Petition Satisfies None of the Traditional Standards Governing Review on Certiorari.

Petitioner asserts that certiorari jurisdiction is properly granted by this Court due to the "complete departure from legal standards" governing a trial court's exercise of its discretion to dismiss a case. (Petitioner's Brief at p. 6-7). Petitioner argues that the dismissal of his case with prejudice is improper in that neither party requested a dismissal with prejudice. Petitioner further asserts that a dismissal with prejudice when neither party so requests constitutes "abuse per se" and therefore dismissal of his case should be reviewed by this Court.

No considerations exist, as defined by Supreme Court Rule 10, to justify review of this case by the Court. Specifically, review on writ of certiorari is proper when a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter or has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court." Supreme Court Rule 10.1(a). In addition, review is proper when a United States court of appeals has decided an important question of federal law that should be settled by this Court or has decided a federal question contrary to applicable decisions of this Court. Supreme Court Rule 10.1(c).

This Court has traditionally declined to resolve issues such as that raised by Petitioner. Specifically, Petitioner raises no issue of broad applicability or public importance. In addition, Petitioner does not seek to resolve a recurring problem or an issue that has affected anyone other than himself. Further, Petitioner does not seek to correct a departure from established legal principles or reconcile a conflict among the various courts of appeal. Instead, Petitioner asks this Court to resolve the question of whether his record of delay was sufficient to justify the trial court's dismissal of his case. A fact specific question of such limited jurisprudential importance does not warrant this Court's review.

II. The Case Below Was Correctly Decided.

The Eighth Circuit Court of Appeals properly affirmed the District Court's dismissal of Petitioner's case with prejudice. Plaintiff's assertion that a court may not dismiss a case with prejudice unless such dismissal is sought by a party to the action finds no support in precedent from the Eighth Circuit or this Court.

This Court has recognized the "inherent power" of a court to dismiss, *sua sponte*, an action with prejudice. *Link v. Wabash R.R.*, 370 U.S. 626, 630 (1962). As noted in *Link*, this inherent power exists, by necessity, to enable a court to manage its own affairs to achieve the "orderly and expeditious disposition of cases." *Id.* at 630-31. Plaintiff's assertion that dismissal of a case with prejudice absent a motion by the Defendant is impermissible would effectively strip a court of its power to control its docket and shift that power to the litigants, thereby thwarting the

"just, speedy, and inexpensive determination of every action" as envisioned by the Federal Rules of Civil Procedure. Fed. R. Civ. P. 1.

As a District Court has the power to dismiss an action with prejudice as a result of a Plaintiff's failure to comply with a court order and that power may be exercised by a court on its own initiative, the U.S. Court of Appeals for the Eighth Circuit properly decided this matter in accordance with controlling precedent by the Eighth Circuit and this Court. *See also, Brown v. Frey*, 806 F.2d 801, 803 (8th Cir. 1986). Accordingly, the petition for certiorari must be denied.

CONCLUSION

WHEREFORE, Respondent respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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